



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

July 14, 1953

Hon. William H. Scott
Criminal District Attorney
Civil Courts Building
Houston 2, Texas

Opinion No. S-70

Re: Authority of justices of
the peace in Harris
County to retain fees
collected as Notary Public,
as local registrar and
fees collected for the
performance of marriage
ceremonies.

Dear Mr. Scott:

You have requested an opinion on the authority of justices of the peace in Harris County to retain fees collected as Notary Public, as local registrar, and for the performance of marriage ceremonies. Section 11 of House Bill 671 of the 53rd Legislature provides that the salary and other compensation contained in this Act shall be in lieu of all other salaries and compensation now received by any district, county or precinct officer. Subdivision (c) of Section 19 of Article 3912e, Vernon's Civil Statutes, provides that "In counties where the Commissioners' Court determine to place the Justices of the Peace on a salary basis the Justice of the Peace shall receive in addition thereto all fees, commissions, or payments for performing marriage ceremonies and for acting as Registrar for the Board of Vital Statistics and when acting as Ex-officio Notary Public." House Bill 671 of the 53rd Legislature, being a later Act of the Legislature repeals Section 19 of Article 3912e insofar as it is in conflict. Therefore, the remaining question for determination is what fees constitute accountable fees of office.

Article 4602, Vernon's Civil Statutes, authorizes justices of the peace to perform marriage ceremonies. No fee is provided for this service. Article 3891, Vernon's Civil Statutes, provides that marriage ceremony fees that may be collected by a justice of the peace are not accountable as a fee of office. Therefore, such fees, if collected

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by a justice of the peace, may be retained by him.
Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946);
Att'y Gen. Ops. V-14 (1947); 0-3234 (1942).

Fees paid justices of the peace acting as local registrar of births and deaths are accountable as fees of office and therefore cannot be retained by him. Att'y Gen. Op. V-1019 (1950).

Article 2376, Vernon's Civil Statutes, provides that each justice of the peace shall be commissioned as Ex-Officio Notary Public of his county. We have been unable to find any authority on the question whether the statutory notary fees constitute a fee of office for the justices of the peace and should be accountable as such. However, we believe that since it is not a mandatory duty placed on the justices of the peace to perform notary services for which statutory fees are provided that such fees constitute fees for personal services which may be retained by the justices of the peace. Moore v. Sheppard, supra.

SUMMARY

Fees collected by justices of the peace compensated on a salary basis as local registrar cannot be retained by him in addition to his salary provided in House Bill 671 of the 53rd Legislature. Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946); Att'y Gen. Ops. V-14 (1947); 0-3234 (1942). Fees collected for the performance of marriage ceremonies and fees collected as Ex-officio Notary Public may be retained by justices of the peace in addition to his salary provided in House Bill 671 of the 53rd Legislature.

APPROVED:

Yours very truly,

B. Duncan Davis
County Affairs Division

JOHN BEN SHEPPERD
Attorney General

Willis E. Gresham
Reviewer

Burnell Waldrep
Executive Assistant

John Ben Sheppard
Attorney General

By *John Reeves*
John Reeves
Assistant

JR:am